

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY McGEE,

Defendant.

ORDER

05-cr-136-bbc

In an order entered on December 12, 2011, I denied defendant Larry McGee's motion under 18 U.S.C. § 3582. Dkt. #66. Defendant has filed a notice of appeal, without submitting the \$455 fee for filing his notice of appeal that is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had court-appointed counsel. Therefore, he can proceed in forma pauperis on

appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the December 12, 2011 order, defendant is not eligible for a sentence reduction under § 3582 because the amendment to the sentencing guidelines does not affect his career-offense level and his guideline remains unchanged. Because defendant is not eligible for a reduction, I will deny his request to proceed in forma pauperis on appeal.

Under Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and (2) a copy of this order.

ORDER

IT IS ORDERED that defendant Larry McGee's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant's appeal is not taken in good

faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 27th day of December, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge